

JA

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

JACK COBB and AMERICAN CANCER  
CENTER,

Plaintiffs,

v.

BLUE CROSS BLUE SHIELD OF ALABAMA,

Defendant.

07CV745  
JUDGE PALLMEYER  
MAGISTRATE JUDGE MASON

**FILED**

FEB 07 2007

NF

Feb. 7, 2007  
MICHAEL W. DOBBINS  
CLERK, U.S. DISTRICT COURT

**NOTICE OF REMOVAL**

Defendant, Blue Cross Blue Shield of Alabama ("BCBS of Alabama"), pursuant to 28 U.S.C. §§ 1331, 1332, 1441 and 1446, hereby provides notice that this cause has been removed to this Court from the Circuit Court of Cook County, Illinois, and states:

1. On August 14, 2006, Plaintiffs, Jack Cobb and American Cancer Center ("Plaintiffs"), filed a Complaint in the Law Division of the Circuit Court of Cook County, Illinois, Case No. 06 L 008578. This action was originally filed in Cook County, a county located within the Northern District of Illinois, Eastern Division.

2. In Count I, Plaintiffs' Complaint purports to state a claim of breach of contract based on Plaintiff Cobb's assignment of his rights as an insured to American Cancer Center. In Count II, Plaintiffs purport to state a common law claim of promissory estoppel. Both Count I and Count II arise from BCBS of Alabama's denial of a claim for benefits under a policy of health insurance issued in connection with Plaintiff Cobb's spouse's employment.

3. BCBS of Alabama seeks to remove this matter to this Court on the basis that the action is within this Court's original jurisdiction under both federal question and diversity

jurisdiction. Plaintiffs have alleged claims in substance seeking to recover benefits from an employee welfare benefit plan as defined by the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1002(1) (“ERISA”) (Exhibit 1, Affidavit of Carl Caudle). This Court has federal question jurisdiction over such claims pursuant to 28 U.S.C. § 1331 and original jurisdiction over such claims pursuant to ERISA, 29 U.S.C. § 1132(e)(1). See Metro. Life Ins. v. Taylor, 481 U.S. 58 (1987) (allowing removal of a complaint raising only state law causes of action preempted by ERISA); Mestayer v. Wis. Physicians Serv. Ins. Corp., 905 F.2d 1077 (7th Cir. 1990).

4. Because the Court has federal question jurisdiction over this action, BCBS of Alabama may remove this action to this Court pursuant to 28 U.S.C. § 1441 without regard to the amount in controversy or residence of the parties.

5. In the alternative, BCBS of Alabama also seeks to remove this matter based on this Court’s diversity jurisdiction under 28 U.S.C. § 1332(a)(1) because this is an action between citizens of different states and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

6. Plaintiff Cobb is a citizen and resident of Illinois (Caudle Aff. at ¶ 3).

7. Plaintiff American Cancer Center is a corporation organized under the laws of the state of Illinois, with its principal place of business in Illinois (Exhibit 2, Affidavit of Ivy A. Walsh).

8. BCBS of Alabama is a non-profit corporation organized under the laws of Alabama, with its principal place of business in Alabama (Caudle Aff. at ¶ 2). There are no other parties to this lawsuit. Therefore, there is complete diversity of citizenship of the parties as

is required for this Court to have subject matter jurisdiction of this action pursuant to 28 U.S.C. § 1332.

9. Plaintiffs' Complaint expressly alleges that the amount in controversy is \$186,659.00. Therefore, the amount in controversy is sufficient for this Court to have subject matter jurisdiction of this action pursuant to 28 U.S.C. § 1332.

10. This Court, therefore, has original jurisdiction of this action pursuant to 28 U.S.C. § 1332 and this action may be removed to this Court from the state court in which it was filed, pursuant to 28 U.S.C. 1441 and 1446.

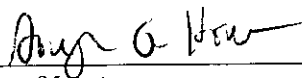
11. BCBS of Alabama was served with process on January 12, 2007. BCBS of Alabama's Notice of Removal, filed this 7th day of February, 2007, is timely, as it was filed within thirty (30) days of service upon BCBS of Alabama of Plaintiffs' Summons and Complaint in this matter as is required by 28 U.S.C. § 1441 and § 1446.

12. BCBS of Alabama will file a copy of this Notice of Removal with the Circuit Court of Cook County, Illinois, promptly after the filing of this Notice of Removal in this Court and will give written notice of this Notice of Removal to Plaintiffs pursuant to 28 U.S.C. § 1446(d).

13. Pursuant to 28 U.S.C. § 1446, attached hereto are copies of all process, pleadings and orders served upon BCBS of Alabama in this action:

- a. Summons; and
- b. Complaint.

BLUE CROSS BLUE SHIELD OF ALABAMA



One of Its Attorneys

Douglass G. Hewitt (#6183834)  
Ivy A. Walsh (#6291004)  
Neal, Gerber & Eisenberg LLP  
Two North LaSalle Street, Suite 2200  
Chicago, IL 60602  
Tel – (312) 269-8000

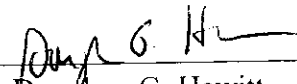
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**CERTIFICATE OF SERVICE**

Douglass G. Hewitt, an attorney, states that he served a copy of **Blue Cross Blue Shield of Alabama's Notice of Removal** to be served upon:

**Michael P. Cohen  
435 West Erie #802  
Chicago, IL 60610**

by mailing same in the U.S. Mailbox located at Two North LaSalle Street, Chicago, Illinois, with postage prepaid, on this 7th day of February, 2007.

  
\_\_\_\_\_  
Douglass G. Hewitt

1120 - Served  
 2220 - Not Served  
 2320 - Served By Mail  
 2420 - Served By Publication  
 SUMMONS

2121 - Served  
 2221 - Not Served  
 2321 - Served By Mail  
 2421 - Served By Publication  
 ALIAS-SUMMONS

(Rev. 9/3/99) CCG 0001

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
 COUNTY DEPARTMENT, Law DIVISION

(Name all parties)

Jack Cobb  
 American Cancer Center

v.  
 Blue Cross Blue Shield of  
 Alabama

ALIAS SUMMONS

No. 06-L-008578

RECEIVED

JAN 12 2007

Hand-delivered  
 by Jefferson Co.  
 Deputy Thrasher

To each defendant:

YOU ARE SUMMONED and required to file an answer to the complaint in this case, a copy of which is hereto attached, or otherwise file your appearance, and pay the required fee, in the office of the Clerk of this Court at the following location:

☒ Richard J. Daley Center, 50 W. Washington, Room 801, Chicago, Illinois 60602

☐ District 2 - Skokie  
 5608 Old Orchard Rd.  
 Skokie, IL 60077

☐ District 3 - Rolling Meadows  
 2121 Euclid  
 Rolling Meadows, IL 60008

☐ District 4 - Maywood  
 1500 Maybrook Ave.  
 Maywood, IL 60153

☐ District 5 - Bridgeview  
 10220 S. 76th Ave.  
 Bridgeview, IL 60455

☐ District 6 - Markham  
 16501 S. Kedzie Pkwy.  
 Markham, IL 60426

You must file within 30 days after service of this summons, not counting the day of service.

IF YOU FAIL TO DO SO, A JUDGMENT BY DEFAULT MAY BE ENTERED AGAINST YOU FOR THE RELIEF REQUESTED IN THE COMPLAINT.

To the officer:

This summons must be returned by the officer or other person to whom it was given for service, with endorsement of service and fees, if any, immediately after service. If service cannot be made, this summons shall be returned so endorsed. This summons may not be served later than 30 days after its date.

Atty. No.: 120201  
 Name: Michael P. Owen  
 Atty. for: Plaintiff  
 Address: 425 S. Erie St. #102  
 City/State/Zip: Chicago, IL 60607  
 Telephone: 312-337-6210

WITNESS, \_\_\_\_\_

Clerk of Court

Date of service: \_\_\_\_\_  
 (To be inserted by officer on copy left with defendant or other person)

Service by Facsimile Transmission will be accepted at: \_\_\_\_\_

(Area Code) (Facsimile Telephone Number)

DOROTHY BROWN

CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION

JACK COBB,  
AMERICAN CANCER CENTER,

Plaintiffs,

v.

BLUE CROSS-BLUE SHIELD  
OF ALABAMA,

Defendant.

No.

COMPLAINT FOR DAMAGES-CONTRACT

COUNT 1--Contract

NOW COME plaintiffs, by their attorney, MICHAEL P. COHEN, and  
complain against defendant as follows:

1. At all times pertinent hereto, plaintiff JACK COBB was an insured of defendant by virtue of his wife's employment. Said contract of insurance is not available to the plaintiffs.

2. Plaintiff JACK COBB assigned his rights as an insured to plaintiff AMERICAN CANCER CENTER, who provided treatment for his cancer, said treatment being the subject matter of this law suit.

3. On or about April 12, 2005 plaintiff AMERICAN CANCER CENTER contacted the defendant via phone to determine whether plaintiff JACK COBB was covered for Intensity-Modulated Radiation Therapy (IMRT).

4. AMERICAN CANCER CENTER was informed by defendant that IMRT coverage was available for JACK COBB.

5. AMERICAN CANCER CENTER then proceeded to render \$187,149.40 worth of IMRT to JACK COBB and billed BLUECROSS BLUESHIELD OF ILLINOIS, as defendant's agent, for \$186,659.00, the remaining \$490.40 being the patient's responsibility.

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CLERK  
COOK COUNTY  
ILLINOIS

6. While AMERICAN CANCER CENTER received some payments for other services rendered to JACK COBB, it did not receive any payment for IMRT.

7. AMERICAN CANCER CENTER has demanded payment in the amount of \$187,149.40 to no avail.

COUNT 2--Promissory Estoppel

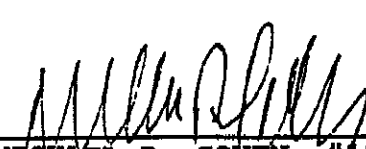
1-4. Plaintiffs reallege paragraphs 1-4 of Count 1 as though fully set forth herein.

5. AMERICAN CANCER CENTER relied reasonably on defendant's statement that IMRT coverage was available for JACK COBB.

6. Based on this reliance, AMERICAN CANCER CENTER rendered \$187,149.409 of IMRT services to JACK COBB and billed defendant \$186,659.00 for these services.

7. This reliance was detrimental to AMERICAN CANCER CENTER since defendant has refused to pay for the IMRT services rendered to JACK COBB.

WHEREFORE, plaintiff prays for a judgment against defendant in the amount of \$186,659.00.

  
MICHAEL P. COHEN, #12081  
Attorney for Plaintiff  
435 West Erie, #802  
Chicago, IL 60610  
312-337-8210



# EXHIBIT

1

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

JACK COBB and AMERICAN CANCER  
CENTER,

Plaintiffs,

v.

BLUE CROSS BLUE SHIELD OF ALABAMA,

Defendant.

No.

**AFFIDAVIT OF CARL CAUDLE**

Carl Caudle, having first been duly sworn, under oath, states as follows:

1. I am employed by Blue Cross Blue Shield of Alabama ("BCBS of Alabama") as the Department Manager, Underwriting Department. I have personal knowledge of the facts set forth below and I am otherwise competent to testify.

2. BCBS of Alabama is a domestic non-profit corporation organized under the laws of Alabama, with its principal place of business in the State of Alabama.

3. Upon information and belief, as well as documents maintained by BCBS of Alabama, Plaintiff Jack Cobb is a resident of and is domiciled in Elgin, Illinois.

4. At the time the medical treatment described in the Complaint was rendered, Plaintiff Jack Cobb, received health care benefits under an employee welfare benefit plan established and maintained by Smurfit Stone Container Corporation (the "Smurfit Plan").

Further affiant sayeth not.

January 26, 2007  
Date

Carl Caudle  
Carl Caudle

Subscribed and sworn to before me this 26<sup>th</sup> day of January, 2007.

Sharon B. Cochran  
Notary Public

# EXHIBIT

2

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

JACK COBB and AMERICAN CANCER  
CENTER,

Plaintiffs,

No.

v.

BLUE CROSS BLUE SHIELD OF ALABAMA,

Defendant.

**AFFIDAVIT OF IVY A. WALSH**

Ivy A. Walsh, having first been duly sworn, under oath, states as follows:

1. I am counsel for Blue Cross Blue Shield of Alabama (“BCBS of Alabama”) in the above-captioned matter.
2. The Complaint names American Cancer Center as a Plaintiff in this matter.
3. I have conducted an electronic search of the state-maintained databases of business entities in Illinois. This search revealed that American Cancer Center is a “Domestic BCA” corporation organized under the laws of Illinois, with its principal place of business in the State of Illinois. A true and correct copy of the Illinois Secretary of State Corporation File Detail Report for American Cancer Center is attached hereto as Exhibit 3.

Further affiant sayeth not.

February 6, 2007  
Date

Ivy A. Walsh  
Ivy A. Walsh

Subscribed and sworn to before me this 6th day of February, 2007.

Gloria Gomez  
Notary Public



NGEDOCs: 1365017.1

# EXHIBIT

## #3



SERVICES PROGRAMS PRESS PUBLICATIONS DEPARTMENTS CONTACT

## CORPORATION FILE DETAIL REPORT

Entity Name	AMERICAN CANCER CENTER, P.C.	File Number	58869449
Status	GOODSTANDING		
Entity Type	CORPORATION	Type of Corp	DOMESTIC BCA
Incorporation Date (Domestic)	05/14/1996	State	ILLINOIS
Agent Name	BHARAT S JAILWALA	Agent Change Date	02/07/2000
Agent Street Address	846 DUNDEE AVE	President Name & Address	BHARAT JAILWALA 7076 STACY DRIVE TERRE HAUTE INDIANA 47802
Agent City	ELGIN	Secretary Name & Address	BHARAT JAILWALA 7076 STACY DRIVE TERRE HAUTE INDIANA 47802
Agent Zip	60120	Duration Date	PERPETUAL
Annual Report Filing Date	03/30/2006	For Year	2006

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**Purchase Certificate of Good Standing**

(One Certificate per Transaction)

[BACK TO CYBERDRIVEILLINOIS.COM HOME PAGE](http://www.ilsos.gov/corporatellc/CorporateLlcController)